

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

YNGRID YOHANA NAVA ZUNIGA
Petitioner,

v.

JOSE RODRIGUEZ JR., Facility
Administrator of Dilley Immigration
Processing Center;

SYLVESTER M. ORTEGA, *in his official
capacity* as Acting Field Office Director of
the ICE San Antonio Field Office of
Enforcement and Removal Operations, U.S.
Immigration and Customs Enforcement;
U.S. Department of Homeland Security;

TODD M. LYONS, *in his official capacity*
as Acting Director, Immigration and
Customs Enforcement, U.S. Department of
Homeland Security;

KRISTI NOEM, *in her official capacity* as
Secretary, U.S. Department of Homeland
Security; and

PAMELA JO BONDI, *in her official
capacity* as Attorney General of the United
States;

Respondents.

Case No. 5:26-cv-00530-OLG

**PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner has a vested liberty interest in remaining free from detention because she relied on Respondents past course of conduct. At the time of Petitioner initial detention, Respondents processed Petitioner under 8 U.S.C. § 1226(a) -- she was detained by DHS officials, was placed

in removal proceedings, and subsequently, was released on her own recognizance. The application of § 1225(b) to Petitioner without a meaningful opportunity to be heard violates the due process clause of the Fifth Amendment. Petitioner's case is factually distinguishable from *Buenrostro-Mendez v. Bondi*, No. 25-20496, ---- F.4th ----, 2026 WL 323330 (5th Cir. 2026). The Fifth Circuit did not address the issues raised by Petitioner. Petitioner respectfully asks the Court to issue an order of immediate release, or in the alternative, order Respondents to conduct a bond hearing.

II. ARGUMENTS

a. Mandatory Detention Under § 1225(b), As Applied, Violates Due Process.

Respondents' actions here terminated any continuous § 1225(b) custody and created a protected liberty interest under the Fifth amendment. Petitioner's initial release from DHS confinement in 2022 was pursuant to an "Order of Release on Recognizance" stating that Petitioner was being released under INA § 236, which is 8 U.S.C. § 1226. *See* Doc. 1-3, Exhibit P-3 [Order of Release on Recognizance]. Petitioner has always been treated "by [the government] as subject to discretionary detention under section 1226, rather than mandatory detention under section 1225." *Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59, 67 (D.N.H. 2025) *citing* *Romero v. Hyde*, — F. Supp. 3d —, 2025 WL 2403827, at *8 (D. Mass. Aug. 19, 2025); *see also* *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *5, *8 (D. Mass. July 7, 2025) (concluding that noncitizen originally detained under § 1225(b) but released on conditional parole under § 1226 and later rearrested on a § 1226 warrant was entitled to bond hearing under § 1226 and its implementing regulations).

Moreover, Respondents past course of conduct effectuated a shift from any putative § 1225(b) detention posture to § 1226(a), as Petitioner lived in the community for over three years under

government-imposed conditions rather than in mandatory custody. Once the government confers such liberty, it cannot revoke it without due process. *Morrissey v. Brewer*, 408 U.S. 471, 481–82 (1972) (recognizing that conditional liberty, once granted, is a protected interest that may not be rescinded without appropriate process). Moreover, there is a “longstanding principle in the criminal context that due process requires a pre-deprivation hearing before the revocation of parole.” *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025) (citing *Espinoza v. Kaiser*, No. 25-cv-1101, 2025 WL 2581185, at *9 (E.D. Cal. Sept. 5, 2025); *Young v. Harper*, 520 U.S. 143, 147–49 (1997)). There is “an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* (citing *Espinoza*, 2025 WL 2581185). Parolees thus have a protected liberty interest in their “continued liberty.” *Id.* A number of district courts have extended this reasoning to the immigration context and held that once released from immigration custody, noncitizens acquire “a protectable liberty interest in remaining out of custody on bond.” *Santiago*, 2025 WL 2792588, at *11.

The governing framework for what process is due when the government withdraws an existing liberty or benefit is supplied by *Mathews v. Eldridge*, 424 U.S. 319 (1976), which requires consideration of the private interest, the risk of erroneous deprivation and value of additional safeguards, and the government’s interest.

Petitioner has a substantial liberty interest in remaining free pending adjudication of her case. She was released from custody over three years ago. Petitioner has an application for asylum pending with the Executive Office for Immigration Review (EOIR). She has a valid work authorization document and social security number based on her pending application. Her continued detention hinders her ability to properly prepare for her immigration hearing and hinders her ability to afford legal representation. Petitioner has previously demonstrated compliance with

the conditions of her release, and no evidence suggests changed circumstances. The government asserts no facts and no facts exist in the record to suggest there have been material changes to Petitioner's actions in appearing for any immigration-related matters, nor that she has since acquired a criminal record to jeopardize the safety of others while released. The government's interest is cognizable, but not greater than Petitioner's interest. Mandatory detention under § 1225(b), without any opportunity for neutral review, creates an unacceptably high risk of erroneous deprivation. A bond hearing before an immigration judge is a minimal safeguard with substantial value. All *Matthews* factors weigh in favor of Petitioner.

The Supreme Court's immigration-detention decisions confirm that due process constrains civil confinement, even where Congress has authorized detention. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (immigration detention is subject to constitutional limits); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (upholding brief, categorical detention in a narrow context while applying due-process principles). These cases do not permit the government to bypass notice and an opportunity to be heard when re-arresting a noncitizen who has been affirmatively released and placed into § 240 proceedings.

The Fifth Circuit did not resolve whether Respondents may revoke a previously granted release under § 1226(a) and impose mandatory detention without notice or an opportunity to be heard. The question in this case is not initial classification at the border; it is whether, after DHS affirmatively released Petitioner on her own recognizance, served her with a Notice to Appear, and placed her into § 240 removal proceedings, the government could arbitrarily later rescind that granted liberty and re-detain her in the interior without procedural safeguards.

b. Exhaustion of remedies is not required.

There is no statutory requirement to exhaust remedies for alien detention claims; rather,

“[u]nder the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.” *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) (citing *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); see also 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal only if ... the alien has exhausted all administrative remedies.”))

Numerous courts considering this issue concluded that exhaustion would be futile or should be excused because the average wait to be heard in the BIA is more than six months. *See Lopez-Arevelo*, 2025 WL 2691828, at *6; *Kostak v. Trump et al.*, No. 3:25-cv-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) (holding that exhaustion was not required and stating that “[t]his Court does not find Respondents’ arguments persuasive because this Court is the proper forum in which Petitioner can bring her constitutional claims.”); *Rodriguez v. Bostock*, 779 F. Supp. 3d at 1255–60 (waiving exhaustion because BIA takes 200 days, on average, to hear an appeal); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ---, 2025 WL 2496379, at *4–5 (E.D. Mich. Aug. 29, 2025) (holding that “prudential exhaustion” should be waived where, as here, “exhaustion would not effectively afford [the petitioner] the relief he seeks” and “BIA lacks authority to review constitutional challenges”); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 at *3–4 (E.D. Mich. Sept. 9, 2025) (holding that no statute required exhaustion and that even if prudential exhaustion applied, waiver was warranted because the administrative remedy “is subject to an unreasonable or indefinite timeline”) *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950096, at *6 (S.D. Tex. Oct. 3, 2025) (the administrative exhaustion finding remains undisturbed by the Fifth Circuit decision).

III. CONCLUSION

The Court should grant the Petition for Writ of Habeas Corpus ordering Respondents to

release her from custody or provide her with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause; and grant her any further relief this Court deems just and proper.

Respectfully Submitted,

/s/Barri Martinez

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